



* **HIGH COURT OF DELHI : NEW DELHI**

+ **ITA No.306 with 307/2002**

% Judgment reserved on: 24th January , 2007

Judgment delivered on: 14th February, 2007

SUDHA BURMAN,
HARSHA BHAWAN,
E-BLOCK, CONNAUGHT PLACE
NEW DELHI

..... Appellant

Through Mr.R.Chaudhary with
Mr.R.K.Chaudhan, Advs.

versus

COMMISSIONER OF INCOME TAX
NEW DELHI-110001

..... Respondent

Through Mr.R.D.Jolly, Adv.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

V.B. GUPTA, J.

By this common judgment, two appeals bearing ITA Nos. 306 and 307/2002 filed by the Appellant against the impugned order dated 3rd June, 2002 passed by the Income Tax Appellate



Tribunal (for short as 'Tribunal') are being disposed off as both these appeals involve common question of law and fact.

2. Common facts as emerge out from the record are that Appellant is wife of Shri A.C. Burman, Chairman M/s Dabur India Ltd. and has income from house property, business and other sources. Husband of the Appellant has undertaken several trips abroad during the relevant period and the Appellant accompanied him on these trips. The company had undertaken the expenses on tickets for the Appellant's visit abroad. The Assessing Officer disallowed 50% of the expenses and treated 50% of the amount spent as income of the Assessee under the provision of Section 2(24)(iv) of the Income Tax Act (for short as 'Act').

3. The Appellant being not satisfied with the order of the Assessing Officer filed an appeal before the Commissioner of Income Tax (Appeal) who set aside the order of the Assessing Officer.

4. The Revenue filed an appeal before the Tribunal and vide impugned order the matter was decided in favour of the Revenue.

5. It has been argued by learned counsel for the Appellant that the expenses were incurred by the Assessee in relation to



the business of the company and as such these expenses have been rightly allowed by the Commissioner of Income Tax (Appeal). Further, the expenses incurred by the company are duly approved by the board of Directors in its meeting held on 20th June, 1998 through a resolution which reads as under:-

“Resolved that the consent of the board be and is hereby given for travelling of the wife of the concerned Whole time or Managing Director for the purpose of the business of the company within India and abroad thereon.”

6. For the years ending 31.3.1993 and 31.3.1994, the husband of the Appellant made 15 and 13 tours respectively to different places but it was only on seven occasions (for each year) the Appellant travelled with her husband. Though all the time the Chairman has travelled for the purpose of the business and it is only in respect of these tours where it has been felt necessary, the Appellant should accompany him looking into the necessity of the business and social functions and the visits required abroad and as such the Appellant did not derive any personal benefit or perquisite or obligation from such visits and in support of his contention, learned counsel for the Appellant has relied upon case law reported as **Commissioner of Income Tax Vs. Shrimati Kamalani Gautam Sarabhai**, (1994) 208 ITR 139.



7. On the other hand, it has been argued by learned counsel for the Revenue that the trips undertaken by the Appellant who happens to be the wife of the Chairman of the company were not in connection with the business and the onus of proof that these trips were undertaken by the Appellant at the behest of the company and in relation to the business of the company, was on the Appellant which onus has not been discharged by her. It is contended that the resolution dated 20th June, 1998 relied upon by the Appellant is of general nature which authorises the wife of the Managing Director to accompany him on his trips abroad, in relation to the business. The justification of each trip has to be given by the Appellant and where the Appellant is not in a position to give justification in accordance with the provision of Section 2(24)(iv) of the Act, the additions have to be made at the hands of the Assessee with respect to the expenses incurred.

8. The initial onus is on the Assessee to show that these trips were required to be taken in connection with the business. Once the Assessee discharges this onus by positive evidence then onus would shift on the Revenue to contradict but unless and until the Assessee discharges the onus by a positive evidence, the Revenue cannot contradict the same.

9. It is an admitted fact that certain trips were taken by the



Appellant along with her husband, who is the chairman of the company but the dispute raised by the Revenue is that her trips were not in relation to the business of the company. Apart from the aforesaid resolution, there is no other material on record to show that these trips were in relation to the business. This resolution indicates that the expenses in relation to the trips of the wife of Managing Director or Chairman or Whole time Director shall be borne by the company, that means, the company has taken a policy to bear the expenses which covers the area of the resolution. This resolution is of general nature. It is nowhere stated that each and every trip undertaken by the wife shall be borne by the company. In 1988, when the resolution was passed, the company could not anticipate how many Directors with their wives shall be visiting abroad in the near future and as such this resolution was general in nature. There has to be justification for the wife of the person concerned to accompany him and unless and until there is justification for the wife of concerned Director accompanying him, such expenses cannot be allowed and there is nothing on record to show that all these trips were taken by the Appellant with regard to the promotion of the business of the company.

10. In the case of the Commissioner of Income Tax Vs. Smt.



Kamalini Gautam Sarabhai (supra) the Assessee had undertaken foreign tour at the instance of the company in which her husband was Director and purpose of the tour as shown by company was to obtain the best results for negotiation at top level with foreign corporations, has to built up the relationship and as such Assessee, therefore, was not getting any benefit by such tour and further no obligation was incurred by the Assessee or her husband for such foreign tour and foreign tour expenses, therefore, not includible in the hands of the Assessee. It was held,

“There was no material to show that it was a pleasure tour arranged by the company for the assessee. It is difficult to appreciate how in view of these facts and circumstances, it can be said that by undertaking these foreign tours, she had derived any advantage or personal gain or that she had benefited in any other manner so that the whole expenditure incurred for these tours can be regarded as her income. We are of the opinion that the case of the assessee was certainly not covered by the first part of the said clause.

In the alternative, it was contended that the case of the assessee would be covered by the second part of the clause. In our opinion, this contention is also misconceived. As pointed out above, by undertaking these foreign tours, the assessee had not incurred any obligation. She had undertaken the tours at the instance of the company and for the purpose of the business of the company. For undertaking such foreign tours, neither had she incurred any obligation nor was any obligation incurred by her husband who was a director of the company. For this reason, even the second was not attracted in this case. The Tribunal was, therefore,



right in holding that the expenditure of Rs. 39,753 incurred by Karamchand Premchand Pvt. Ltd. on the foreign tours was not includible as income under section 2(24)(iv) of the Act in the computation of the total income of the assessee.”

11. There is no dispute to this proposition of law that the expenses incurred on the foreign trips of the wives are to be allowed provided, they are in relation to the business of the company. The question whether the Assessee can be said to have received any benefit or not is a mixed question of law and fact and what this Court has to decide is whether on the facts found she can be said to have received benefit as contemplated by Section 2(24) of the Act.

12. Section 2(24) defines the term 'Income'. It is an inclusive definition and clause (iv) of that definition reads as under:

“The value of any benefit or perquisite, whether convertible into money or not, obtained from a company either by a director or by a person who has a substantial interest in the company, or by a relative of the director or such person, and any sum paid by any such company in respect of any obligation which, but for such payment, would have been payable by the director or other person aforesaid.”

13. Whether these foreign trips of the Appellant were in relation to the business of company or not, for this purpose the order dated 29.2.2006 passed by the Assessing Officer may be referred to, relevant portion of which read as under:

“The Assessee is wife of Chairman of Dabur India Ltd. Sh.A.C. Burman. During the year under



consideration the Assessee has travelled abroad alongwith her husband. As the list furnished by the Assessee, she has made seven visits to different places, such as London, Paris, Kathmandu, Dubai, Bangkok etc. The Assessee contends that these visits to foreign countries were made alongwith her husband, who was on foreign trip for the business purposes. She further adds that her visit was essential to promote business interest of the company in which her husband is Chairman.

She however has failed to bring any evidence which may suggest that her visit was essential for the business interest of the company which has made payments for such visits.

In this situation it can not be said that she was doing any service to the company.”

14. As per order of the Assessing Officer, there is a clear finding of fact that the Assessee has failed to bring any evidence which may suggest that her visit was essential for the business interest of the company for which the company has made payment. In this situation it cannot be said that she was doing any service to the company.

15. Thus, in the present case, the business exigencies and business circumstances in which the Appellant accompanied her husband is missing and what benefit has accrued to the company on account of her visit abroad has also not been mentioned.

16. Accordingly, we hold that there is no infirmity in the order of the Tribunal and the order of the Tribunal does not give rise to a question of law, much less a substantial question of law, to fall



within the limited purview of Section 260-A of the Act, which is confined to entertaining only such appeals against the order which involves a substantial question of law.

17. Accordingly, present appeals are hereby dismissed.

(V. B. GUPTA)
JUDGE

FEBRUARY 14, 2007
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(MADAN B. LOKUR)
JUDGE